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Tom Power - March 19, 2007

Public Power and Northwestern

Public Power and the Proposed Takeover of NorthWestern Energy

The Montana Public Service Commission concluded three days of technical hearings on the proposed takeover of Montana's dominant electric and natural gas utility by the Australia-based investment bank, Babcock and Brown Limited. It was no surprise that the Australian connection and the complex legal and financial structure of this international investment company got most of the attention.

Given that simply having the central offices of NorthWestern Energy in Sioux Falls, South Dakota, has caused management problems in Montana, the idea of decisions being made in Sydney, Australia, rather than Sydney, Montana, was discouraging to many. The complex Chinese-puzzle tangle of subsidiaries that makes up Babcock and Brown was almost impenetrable to those analyzing the takeover.

But Montanans, including our leaders and regulators, should not play the naïve country-bumpkin when evaluating this proposed takeover.

The fact is that NorthWestern is almost certain to be bought up by a national or international conglomerate. NorthWestern is currently a relatively small compact company centered on Montana only because its recent bankruptcy forced it to shed all of its other businesses. The current stockholders of NorthWestern are the vultures of the capitalist world. They bought up the debt of a bankrupt company for pennies on the dollar knowing that that worthless debt would be turned into ownership shares in NorthWestern as it emerged from bankruptcy. The new shareholders are short-term investors who were just waiting to sell the company off to one of many competing bidders. Among the initial bidders was billionaire diversified investor Warren Buffett who recently bought Portland-based PacifiCorp, the regional utility that used to serve northwestern Montana and still serves six Western states. Buffett added PacificCorp to his MidAmerican utility holding company headquartered in Iowa. If Buffett makes another bid, will Montanans face a more "homey" utility? Doubtful! Buffett's purchases are part of a wave of utility consolidations going on across America and the world. NorthWestern will inevitably attract some of those utility holding companies when it goes back on the market if the Montana Public Service Commission rejects the Babcock and Brown bid.

One attractive aspect of Babcock and Brown is that the branch that would own and run NorthWestern is focused on long-term investments in utility-like businesses because it promotes itself as supplying safe, stable, investments that pay a substantial part of their earnings out to stockholders in dividends. It was exactly those characteristics of utility stocks that led widows, retirees, and retirement funds to focus on such investments in the past.

Babcock and Brown also lets each of its subsidiaries be managed separately, largely independently, partly because it does not want financial problems that may develop in one subsidiary to spread to Babcock and Brown's other companies. For that reason, NorthWestern would remain a separate operating company that functions more or less as the regulated utility that it is, regulated by a Montana Commission and protected from outside predatory financial raids by the same Commission.

There is a theoretical alternative to a Babcock and Brown takeover that might be quite superior: namely the creation of a real Montana-based publicly-owned utility. In theory, if structured appropriately, that could give us the public control that regulation now gives us along with public accountability of the management of the utility to the people of the state.

The problem is that mere utility ownership by a government agency does not guarantee any of those good things. Public ownership has often led to the worst of all possible outcomes: A utility subject to no effective regulation, ruled by a self-perpetuating entrenched board that is responsible to no one. The Pacific Northwest has plenty of experience with the malfeasance and catastrophe that can follow from that.

The key is to design the governance of the public utility so that an active elected board actually runs the public utility and can be turned out of office if they are not doing a good job. That governance structure has to encourage citizens to be knowledgeable about the decisions the public utility is making and motivated to run for the board in order to given the utility proper direction.

The public power proposal that was offered to Montanans by the cities over the last couple of years and the public power proposal recently introduced to the Montana Legislature do not lay out a governance structure to assure the democratic character of publicly-owned utility. Instead, they create an appointed power authority that will seek to buy NorthWestern Energy. If such a purchase is successful, within a couple of years, the

over...

Legislature will be required to figure out what the governance structure should be. The new legislation, like the old cities' proposal, offers us a pig in a poke: The state will buy the utility and then we will somehow figure out how to govern it.

That will not do! The advocates for public power have had several years to talk to Montanans, develop an attractive governance structure that encourages democratic control, technical competence, and financially as well as environmentally responsible decision making. But that dialogue and the creative thinking it would encourage have not taken place. All that we are ever offered is a temporary skeleton that some appointed board and some legislature at some time in the future will flesh out for us.

That is worse than what we have now. If we are going to realize the positive potential of a publicly-owned utility in Montana, a lot more creative political thought has got to go into that effort ahead of time.

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